

§ 791.304 Review and comment period.

The chief executive officer shall have a 30-calendar day comment period, beginning on the date of the notification letter described in § 791.303, to submit written comments relevant to a determination by the field office concerning the approval of an application for housing assistance. The field office shall consider the comment period closed when the written comments are received. In no case shall the Program Office Director in the field office be obligated to consider subsequent or revised comments unless the initial response indicated that additional comments would be provided and such comments are received prior to the expiration of the 30-day comment period. As an alternative to this process, the chief executive officer may submit any comments on the application with the application at the time it is submitted to HUD. Such early comment shall state whether such comment is intended to be the final comment, notwithstanding the 30-day period otherwise provided under this paragraph.

§ 791.305 HUD review of applications for housing assistance.

(a) The field office shall not approve an application for housing assistance prior to either:

- (1) Receipt of comments pursuant to § 791.304; or
- (2) Expiration of the 30-day comment period, whichever occurs earlier.

(b) In determining whether an application will be approved, the field office shall consider the comments provided by the local government including comments submitted by the chief executive officer on behalf of the local government. The field office shall make an independent determination as to whether there is a need for housing assistance and whether facilities and services are adequate before approving the application.

(c) The field office shall promptly notify both the chief executive officer and the applicant of the HUD determination with respect to the approval or disapproval of the application for housing assistance.

Subpart D—Allocation of Budget Authority for Housing Assistance

§ 791.401 General.

This subpart D establishes the procedures for allocating budget authority under section 213(d) of the Act for the programs identified in § 791.101(a). It describes the allocation of budget authority by the appropriate Assistant Secretary to the applicable Program Office Director in the HUD field office, and by the Program Office Director to allocation areas within their jurisdiction.

§ 791.402 Determination of low-income housing needs.

(a) Before budget authority is allocated, the Assistant Secretary for Policy Development and Research shall determine the relative need for low-income housing assistance in each HUD field office jurisdiction. This determination shall be based upon data from the most recent, available decennial census and, where appropriate, upon more recent data from the Bureau of the Census or other Federal agencies, or from the American Housing Survey.

(b) Except for paragraph (c) of this section, the factors used to determine the relative need for assistance shall be based upon the following criteria:

- (1) *Population.* The renter population;
- (2) *Poverty.* The number of renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census;
- (3) *Housing overcrowding.* The number of renter-occupied housing units with an occupancy ratio of 1.01 or more persons per room;
- (4) *Housing vacancies.* The number of renter housing units that would be required to maintain vacancies at levels typical of balanced market conditions;
- (5) *Substandard housing.* The number of housing units built before 1940 and occupied by renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census; and
- (6) *Other objectively measurable conditions.* Data indicating potential need for rental housing assistance, such as the number of renter households with incomes below specified levels and paying a gross rent of more than 30 percent of household income.

(c)(1) For the section 202 elderly program, the data used shall reflect relevant characteristics of the elderly population. The data shall use the criteria specified in paragraph (b)(1) and (6) of this section, as modified to apply specifically to the needs of the elderly population.

(2) Budget authority for the Indian housing program under 24 CFR part 905 shall be allocated on the basis of the relative housing needs of the Indian tribal population, as measured by the Bureau of Indian Affairs, and by data for non-BIA recognized groups served by the Indian housing program.

(d) Based on the criteria in paragraphs (b) and (c)(1) of this section, the Assistant Secretary for Policy Development and Research shall establish housing needs factors for each county and independent city in the field office jurisdiction, and shall aggregate the factors into metropolitan and non-metropolitan totals for the field office. The field office total for each metropolitan and nonmetropolitan factor is then divided by the respective national total for that factor. The resulting housing needs ratios under paragraph (b) of this section are then weighted to provide metropolitan and nonmetropolitan housing needs percentages for each field office, using the following weights: Population, 20 percent; poverty, 20 percent; housing overcrowding, 10 percent; housing vacancies, 10 percent; substandard housing, 20 percent; other objectively measurable conditions, 20 percent. For the section 202 elderly program, the two criteria described in paragraph (c)(1) of this section are weighted equally.

(e) The Assistant Secretary for Policy Development and Research shall adjust the housing needs percentages derived in paragraph (d) of this section to reflect the relative cost of providing housing among the field office jurisdictions.

§ 791.403 Allocation of housing assistance.

(a) The total budget authority available for any fiscal year shall be determined by adding any available, unreserved budget authority from prior fiscal years to any newly appropriated budget authority for each housing pro-

gram. On a nationwide basis, at least 20 percent, but not more than 25 percent, of the total budget authority available for any fiscal year, which is allocated pursuant to paragraph (b)(2) of this section and any amounts which are retained pursuant to § 791.407, shall be allocated for use in nonmetropolitan areas.

(b) Budget authority available for the fiscal year, except for that retained pursuant to § 791.407, shall be allocated to the field offices as follows:

(1) Budget authority shall be allocated as needed for uses that the Secretary determines are incapable of geographic allocation by formula, including—

(i) Amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public and Indian housing, assistance in support of the property disposition and loan management functions of the Secretary;

(ii) Assistance which is—

(A) The subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the Fiscal Year in which the funds are to be allocated;

(B) Reported in the Operating Plan submitted by HUD to the Committees on Appropriations; or

(C) Included in an authorization statute where the nature of the assistance, such as a prescribed set-aside, is, in the determination of the Secretary, incapable of geographic allocation by formula,

(iii) Assistance determined by the Secretary to be necessary in carrying out the following programs authorized by the Cranston-Gonzalez National Affordable Housing Act: the Homeownership and Opportunity Through HOPE Act under title IV and HOPE for Elderly Independence under section 803.

(2) Budget authority remaining after carrying out allocation steps outlined in paragraph (b)(1) of this section shall